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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 466

EDWARD ROBERT GYURO
PETITIONER

Vs.

THE STATE OF CONNECTICUT
RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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No.

EDWARD ROBERT GYURO

vs.

THE STATE OF CONNECTICUT

TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Connecticut, announced May 7, 1968.

The opinion of the Supreme Court of the State of Connecticut is thus far unreported, and is reprinted in Petitioner's Appendix.

STATEMENT OF JURISDICTION

The date of the announcement of the judgment sought to be reviewed is May 7, 1968. On July 30, 1968, the Hon. John M. Harlan ordered that the time for filing a petition for writ of certiorari be extended to September 4, 1968.

The jurisdiction of this Court is invoked under 28*United States Code, Section* 1257.

QUESTIONS PRESENTED FOR REVIEW

1. DID THE SUPREME COURT OF THE STATE OF CONNECTICUT ERR IN DECIDING THAT THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES DO NOT REQUIRE THE STATES TO INDICT, BY A GRAND JURY, DEFENDANTS CHARGED WITH INFAMOUS CRIMES?

2. DID THE SUPREME COURT OF THE STATE OF CONNECTICUT ERR IN DECIDING THAT THE PETITIONER'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED DESPITE THE FACT THAT THE RECORD DID NOT CONTAIN A WARRANT FOR THE ARREST OF THE PETITIONER?

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional Provisions involved are as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval force, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U.S.C.A. Const. Amend. V

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law . . ."

U.S.C.A. Const. Amend. XIV, Section 1

". . . No person shall be held to answer for any crime punishable by death or life imprisonment, unless on a presentment or an indictment of a grand jury, except in the armed forces, or in the Militia when in actual service in time of war or public danger."

Conn. Gen. Statutes Const. Art. 1 *Sec.* 8, *p.* 344

STATEMENT OF THE CASE

On July 15, 1965, upon the complaint of a prosecuting attorney for the Circuit Court of the State of Connecticut, the defendant was charged with the crime of attempted larceny. The complaint was not supported by "oath and affirmation" although the form of the complaint contains a provision therefor.* Thereafter, on October 25, 1965, the defendant pleaded not guilty to the charge, and the Circuit Court found "probable cause." The defendant was then bound over to the Superior Court where he was presented on an Information filed by the State's Attorney, on the charges of Breaking and Entering and Attempted Larceny. The defendant was not presented to or indicted by a Grand Jury.

In the Trial Court, the defendant moved to quash or dismiss the information on the ground that he was being required

*See Appendix Page 10a.

to answer for infamous crimes without presentment to or indictment by a grand jury in violation of the fifth and fourteenth amendments to the Constitution of the United States. The motion was denied, and the defendant was convicted by a jury on both charges. On appeal, before the Supreme Court of the State of Connecticut, the defendant assigned as error, the ruling of the trial court in denying his motion to quash or dismiss the information. The appellate court affirmed the ruling of the trial court on the motion.

In the Supreme Court of the State of Connecticut, the defendant raised, for the first time, the issue that he was not arrested by a warrant supported by oath and affirmation, that he did not waive his right to attack the arrest on appeal and that his warrantless arrest was apparent on the face of the record before the appellate court. The court determined that, despite the fact that the record failed to show how the defendant was arrested, the defendant was not illegally arrested.

I. THE DEFENDANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE HE WAS NOT PRESENTED TO OR INDICTED BY A GRAND JURY.

The Constitution of the State of Connecticut (*Article* 1, *Sec.* 8, *C.G.S.A. Constitution*) limits the right to an indictment by grand jury to crimes punishable by death or life imprisonment.[1] Because of this limitation, the Courts of that State have

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[1]Amendment 5, United States Constitution requires a Grand Jury Indictment in cases involving a capital or infamous crime. Both of the offenses with which Petitioner was charged are "infamous crimes". Drazen v. New Haven Taxicab Co. 95 Conn. 500.

customarily indicted defendants by the process of an Information brought by the various state's attorneys.

Thus, for example, the state's attorney may file an information in the Superior Court against one accused of a crime without a preliminary hearing before a magistrate or any other judicial officer or body. See *Conn. Gen. Statutes, Section* 54-42.* Indeed, it has been held in Connecticut that the investigation by the state's attorney and the determination by *him* that there is reasonable ground to proceed against the accused, takes the place of any preliminary hearing that may be required by "due process of law." *State v. Hayes*, 127 Conn. 543, 581.

Alternatively, a state's attorney may proceed under Section 54-43 *Conn. Gen. Statutes*,* and, upon his "representation" that he has reasonable ground to believe that a crime has been committed, the Superior Court, or a Judge thereof, is empowered to issue a warrant for the arrest of the person complained against. It was not until 1965 that Connecticut required a state's attorney applying for a bench warrant to submit facts, supported by oath or affirmation, from which a judge can determine that probable cause exists for the issuance of the warrant. See *State v. Licari*, 153 Conn. 127.

The case at bar affords a third example of the use of an Information in Connecticut. A circuit court prosecutor may file an information against an accused in the circuit court, and, under Section 54-1a Conn. Gen. Statutes, if the complaint is legally brought before the court, one of two procedures is followed:

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*Cf. Appendix Page 11a.

a. If the offense complained of is punishable by either a fine of more than $1,000 or imprisonment for more than one year, but not more than 5 years, the court may hold a hearing in "probable cause" or take jurisdiction itself of the crime, depending upon the recommendation of the prosecutor.

b. If the offense complained of is punishable by imprisonment for more than 5 years, the court shall conduct a hearing in probable cause.

Thus, under Connecticut law, an individual is anointed with the stigma of accusation by the finger of the prosecutor alone.

No less consideration should be given to an individual with respect to the manner in which he is accused of a crime than is given to the manner in which he is arrested or searched prior to indictment. This court was careful to point out in *Aguilar v. Texas*, 378 U.S. 108 (1964) that the sufficiency of an application for a search warrant must be made by a "neutral and detached magistrate" and not by one engaged in the "competitive enterprise of ferreting out crime." *Ibid*, p. 115. Accusation, similarly, should be removed from the sole province of the prosecuting attorney to one detached from the everyday battle against crime.

The purpose of the Fifth Amendment, in this regard, is to insure that an individual is charged with an offense by his fellow citizens, acting independently of either the prosecuting attorney or a judge. See *Stirone v. United States*, 361 U.S. 212.

There is no struggle with the constitutional mandate of the Fifth Amendment in the federal courts. The same protection, however, does not exist in the state courts, because it is said, the Fifth Amendment requirement of indictment by grand jury is not binding upon the States. See *Hurtado v. California*, 110 U.S. 516, 534.

The isolation of the "grand jury" clause of the Fifth Amendment defies reason, especially when most of the other protections contained in the Bill of Rights have been held applicable to the States via the Fourteenth Amendment.

All of the rights safeguarded by the First Amendment have been held by a series of decisions, to be applicable to the States.

Fiske v. Kansas
274 U.S. 380 (1927)

Cantwell v. Connecticut
310 U.S. 296 (1940)

Near v. Minnesota
283 U.S. 697 (1931)

DeJonge v. Oregon
299 U.S. 353 (1937)

The right to a trial by jury guaranteed defendants in criminal cases in federal courts by the Third Amendment is also guaranteed by the Fourteenth Amendment to defendants in State court trials.

Duncan v. Louisiana
391 U.S. 145
Decided May 20, 1968

The standard for obtaining a search warrant under the Fourth Amendment has been imposed upon the States under the Fourteenth Amendment.

Aguilar v. Texas
378 U.S. 108

Similarly, the Fifth Amendment's prohibition against compulsory self-incrimination has been held applicable to the States through the Fourteenth Amendment.

Malloy v. Hogan
378 U.S. 1

Murphy v. Waterfront Comm. of N.Y. Harbor
378 U.S. 52

The Sixth Amendment right of an accused to have compulsory process for obtaining witnesses in his favor is applicable to the States via the Fourteenth Amendment.

Washington v. State of Texas
388 U.S. 14

The right to a speedy trial is made applicable to the States by the Fourteenth Amendment.

Klopfer v. State of North Carolina
386 U.S. 213

The right of an accused under the Sixth Amendment to confront the witnesses against him is applicable to the States.

Pointer v. Texas
380 U.S. 400

The right of an accused to have counsel guaranteed by the Sixth Amendment, has been made enforceable upon the States through the Fourteenth Amendment.

Gideon v. Wainwright
372 U.S. 335

Ten Justices of this Court have supported the view that the Fourteenth Amendment prevents State invasion of rights enumerated in the first eight amendments. See *Gideon v. Wainwright*, 372 U.S. (*Opinion of Justice Douglas, at page* 345)

Absorption of the first ten amendments by the Fourteenth Amendment is more than a trend; it has become a judicial awareness of the fact that all of the protections guaranteed by the Bill of Rights are applicable to the States as well as the federal government.

The method of proceeding against an accused by information, as permitted by Connecticut, affords practically no protection at a critical stage of the criminal proceedings. Prosecutors, however honorable, are often motivated largely by the zeal of their duty to combat crime. Zeal, competition and the everyday battle against crime may lead, among other things, to a "stereotyped" attitude on the part of the prosecutor. He is called upon to judge whether an individual should be brought to trial in the first instance, a function which, we contend, he should not be empowered to perform. Judicial control has been the keynote of the great decisions of this court that have effectively removed arbitrary and unwarranted action from the power of the police. Thus, stringent requirements have been placed upon applications for search warrants and arrest war-

rants, the admissibility of confessions, etc. Yet, the power of the state prosecutor alone to accuse, despite the possibility of wrongful accusation, remains inviolate within the States and beyond the reach of the Fifth Amendment. An information accusing an individual with an infamous crime is usually the product of an investigation by police, an arrest and/or a search. The prosecutor weighs the information brought to his attention as a result of the investigation, arrest and/or search, and decides to prosecute the suspect. He claims to have reasonable cause by virtue of what the police have brought before him. The suspect, of course, has no way of testing the validity or sufficiency of the information that forms the foundation of the prosecutor's decision. It is only after he has been stained with the accusation that he can make such a challenge.

In commenting upon the incorporation into the Fourteenth Amendment of the Sixth Amendment right to a jury trial, this Court remarked:

"Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutors and against the compliant, biased or eccentric judge . . . Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges."

Duncan v. Louisiana
391 U.S. 145

The same reasoning should apply to the Sixth Amendment

requirement of indictment by Grand Jury. If, as stated in *Duncan*, the framers of the constitution adopted the jury trial provision of the Sixth Amendment because of a "fear of unchecked power" it is reasonable to conclude that the Grand Jury proviso was adopted and made part of the same amendment for that reason.

Petitioner contends that the Grand Jury provision is made obligatory upon the states by the Fourteenth Amendment, and that the failure of the State of Connecticut to proceed against him by Grand Jury indictment was a violation of his constitutional rights.

II. THE DEFENDANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BECAUSE HE WAS NOT ARRESTED BY A WARRANT SUPPORTED BY OATH AND AFFIRMATION.

The Connecticut Supreme Court noted that the record failed to disclose how the defendant was arrested. Nevertheless, petitioner's contention that his arrest violated constitutional provisions was rejected on the basis that: 1) the court concluded that the arrest was not illegal; and 2) the court held that the petitioner waived his right to attack the constitutionality of the "arrest."

It is our position that *O'Connor v. Ohio*, 385 U.S. 92 stands for the proposition that errors of Federal constitutional dimension are not waived because of a failure to meet state procedural requirements in the trial court.

The information was the only document in the record that could considerably form the basis for the arrest of the defendant. Because the information was not signed under oath, the arrest of the defendant violated his constitutional right to be arrested by a warrant, issued upon probable cause and supported by oath or affirmation.

Giordnello v. United States
357 U.S. 480

Aguilar v. Texas
378 U.S. 108

CONCLUSION

For the reasons stated, it is respectfully submitted that the Court grant this Petition.

Respectfully submitted,

W. PAUL FLYNN
Counsel for Petitioner

CERTIFICATION

This is to certify that five copies of the foregoing petition for certiorari were mailed to Richard Schatz, Esq., Assistant State's Attorney, Superior Court Building, Hartford, Connecticut, on August 31, 1968.

W. PAUL FLYNN
Counsel for Petitioner